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HOUSE BILL 526

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Richard D. Vigil

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; PROHIBITING THE SALE OF ALCOHOLIC BEVERAGES AT GAS STATIONS; DEFINING "LICENSED PREMISES" NOT TO INCLUDE FUELING STATION LOCATIONS; MAINTAINING CERTAIN RIGHTS IN LIQUOR LICENSES; PROVIDING A PERIOD OF TIME FOR LIQUOR LICENSES TO BE ASSIGNED, TRANSFERRED, SOLD OR LEASED; PROVIDING FOR THE SALE OF STOCKS OF ALCOHOLIC BEVERAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-3A-3 NMSA 1978 (being Laws 1981, Chapter 39, Section 3, as amended) is amended to read:

"60-3A-3. DEFINITIONS.--As used in the Liquor Control Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin

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1 and aromatic bitters bearing the federal internal revenue strip
2 stamps or any similar alcoholic beverage, including blended or
3 fermented beverages, dilutions or mixtures of one or more of
4 the foregoing containing more than one-half percent alcohol,
5 but excluding medicinal bitters;

6 B. "beer" means an alcoholic beverage obtained by
7 the fermentation of any infusion or decoction of barley, malt
8 and hops or other cereals in water, and includes porter, beer,
9 ale and stout;

10 C. "brewer" means a person who owns or operates a
11 business for the manufacture of beer;

12 D. "club" means:

13 (1) any nonprofit group, including an
14 auxiliary or subsidiary group, organized and operated under the
15 laws of this state, with a membership of not less than fifty
16 members who pay membership dues at the rate of not less than
17 five dollars (\$5.00) per year and who, under the constitution
18 and bylaws of the club, have all voting rights and full
19 membership privileges, and which group is the owner, lessee or
20 occupant of premises used exclusively for club purposes and
21 which group the director finds:

22 (a) is operated solely for recreation,
23 social, patriotic, political, benevolent or athletic purposes;
24 and

25 (b) has been granted an exemption by the

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1 United States from the payment of the federal income tax as a
2 club under the provisions of Section 501(a) of the Internal
3 Revenue Code of 1986, as amended, or, if the applicant has not
4 operated as a club for a sufficient time to be eligible for the
5 income tax exemption, it must execute and file with the
6 director a sworn letter of intent declaring that it will, in
7 good faith, apply for [~~such~~] an income tax exemption as soon as
8 it is eligible; or

9 (2) an airline passenger membership club
10 operated by an air common carrier that maintains or operates a
11 clubroom at an international airport terminal. For the
12 purposes of this paragraph, "air common carrier" means a person
13 engaged in regularly scheduled air transportation between fixed
14 termini under a certificate [~~of public convenience and~~
15 ~~necessity~~] issued by the [~~civil aeronautics board~~] federal
16 aviation administration;

17 E. "commission" means the secretary of public
18 safety when the term is used in reference to the enforcement
19 and investigatory provisions of the Liquor Control Act and
20 means the superintendent of regulation and licensing when the
21 term is used in reference to the licensing provisions of the
22 Liquor Control Act;

23 F. "department" means the special investigations
24 division of the department of public safety when the term is
25 used in reference to the enforcement and investigatory

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1 provisions of the Liquor Control Act and means the director of
2 the alcohol and gaming division of the regulation and licensing
3 department when the term is used in reference to the licensing
4 provisions of the Liquor Control Act;

5 G. "director" means the director of the special
6 investigations division of the department of public safety
7 when the term is used in reference to the enforcement and
8 investigatory provisions of the Liquor Control Act and means
9 the director of the alcohol and gaming division of the
10 regulation and licensing department when the term is used in
11 reference to the licensing provisions of the Liquor Control
12 Act;

13 H. "dispenser" means a person licensed under the
14 provisions of the Liquor Control Act selling, offering for sale
15 or having in [~~his~~] the person's possession with the intent to
16 sell alcoholic beverages both by the drink for consumption on
17 the licensed premises and in unbroken packages for consumption
18 and not for resale off the licensed premises;

19 I. "distiller" means a person engaged in
20 manufacturing spirituous liquors;

21 J. "golf course" means a tract of land and
22 facilities used for playing golf and other recreational
23 activities that includes tees, fairways, greens, hazards,
24 putting greens, driving ranges, recreational facilities,
25 patios, pro shops, cart paths and public and private roads that

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1 are located within the tract of land;

2 K. "governing body" means the board of county
3 commissioners of a county or the city council or city
4 commissioners of a municipality;

5 L. "hotel" means an establishment or complex having
6 a resident of New Mexico as a proprietor or manager and where,
7 in consideration of payment, meals and lodging are regularly
8 furnished to the general public. The establishment or complex
9 must maintain for the use of its guests a minimum of twenty-
10 five sleeping rooms;

11 M. "licensed premises":

12 (1) means the contiguous areas or areas
13 connected by indoor passageways of a structure and the outside
14 dining, recreation and lounge areas of the structure that are
15 under the direct control of the licensee and from which the
16 licensee is authorized to sell, serve or allow the consumption
17 of alcoholic beverages under the provisions of its license;
18 provided that in the case of a restaurant, including a
19 restaurant that has operated continuously in two separate
20 structures since July 1, 1987 and that is located in a local
21 option district that has voted to disapprove the transfer of
22 liquor licenses into that local option district, hotel, golf
23 course or racetrack, "licensed premises" includes all public
24 and private rooms, facilities and areas in which alcoholic
25 beverages are sold or served in the customary operating

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1 procedures of the restaurant, hotel, golf course or racetrack;
2 but

3 (2) does not include premises or a location
4 where motor fuel or liquefied petroleum gases or compressed
5 natural gases are sold for the generation of power in an
6 internal combustion engine. For the purposes of this
7 paragraph, "motor fuel" means any liquid product used for the
8 generation of power in an internal combustion engine and
9 "liquefied petroleum gases" and "compressed natural gases" have
10 the meaning provided in the LPG and CNG Act;

11 N. "local option district" means a county that has
12 voted to approve the sale, serving or public consumption of
13 alcoholic beverages, or [~~any~~] an incorporated municipality that
14 falls within a county that has voted to approve the sale,
15 serving or public consumption of alcoholic beverages, or [~~any~~]
16 an incorporated municipality of over five thousand population
17 that has independently voted to approve the sale, serving or
18 public consumption of alcoholic beverages under the terms of
19 the Liquor Control Act or any former act;

20 O. "manufacturer" means a distiller, rectifier,
21 brewer or winer;

22 P. "minor" means a person under twenty-one years of
23 age;

24 Q. "package" means an immediate container of
25 alcoholic beverages that is filled or packed by a manufacturer

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1 or wine bottler for sale by the manufacturer or wine bottler to
2 wholesalers;

3 R. "person" means an individual, corporation, firm,
4 partnership, copartnership, association or other legal entity;

5 S. "rectifier" means a person who blends, mixes or
6 distills alcohol with other liquids or substances for the
7 purpose of making an alcoholic beverage for the purpose of sale
8 other than to the consumer by the drink, and includes all
9 bottlers of spirituous liquors;

10 T. "restaurant" means an establishment having a New
11 Mexico resident as a proprietor or manager that is held out to
12 the public as a place where meals are prepared and served
13 primarily for on-premises consumption to the general public in
14 consideration of payment and that has a dining room, a kitchen
15 and the employees necessary for preparing, cooking and serving
16 meals; provided that "restaurant" does not include
17 establishments as defined in rules promulgated by the director
18 serving only hamburgers, sandwiches, salads and other fast
19 foods;

20 U. "retailer" means a person licensed under the
21 provisions of the Liquor Control Act selling, offering for sale
22 or having in [~~his~~] the person's possession with the intent to
23 sell alcoholic beverages in unbroken packages for consumption
24 and not for resale off the licensed premises;

25 V. "spirituous liquors" means alcoholic beverages

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1 as defined in Subsection A of this section except fermented
2 beverages such as wine, beer and ale;

3 W. "wholesaler" means a person whose place of
4 business is located in New Mexico and who sells, offers for
5 sale or possesses for the purpose of sale any alcoholic
6 beverages for resale by the purchaser;

7 X. "wine" includes the words "fruit juices" and
8 means alcoholic beverages obtained by the fermentation of the
9 natural sugar contained in fruit or other agricultural
10 products, with or without the addition of sugar or other
11 products, that do not contain less than one-half percent nor
12 more than twenty-one percent alcohol by volume;

13 Y. "wine bottler" means a New Mexico wholesaler who
14 is licensed to sell wine at wholesale for resale only and who
15 buys wine in bulk and bottles it for wholesale resale;

16 Z. "winegrower" means a person who owns or operates
17 a business for the manufacture of wine; and

18 AA. "winer" means a winegrower."

19 Section 2. A new section of the Liquor Control Act is
20 enacted to read:

21 "[NEW MATERIAL] RENEWAL OF INACTIVE LICENSES.--

22 A. The holder of a qualified license formerly
23 issued pursuant to the Liquor Control Act for a location that
24 no longer meets the definition of licensed premises on and
25 after July 1, 2009 may renew the license in an inactive status,

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1 and the license shall not be subject to cancellation for
2 failure to engage in business pursuant to Section 60-6B-7 NMSA
3 1978 until July 1, 2011, at which time the director may
4 exercise the discretion provided to the director in Section
5 60-6B-7 NMSA 1978 to extend the inactive period for good cause
6 shown.

7 B. During the inactive period provided for in
8 Subsection A of this section:

9 (1) an inactive license shall be subject to
10 the rights of and limitations on licenses provided in Section
11 60-6A-19 NMSA 1978;

12 (2) the holder of an inactive license may
13 transfer, assign, sell or lease the inactive license for use at
14 a licensed premises pursuant to the provisions of the Liquor
15 Control Act and directives of the director; and

16 (3) the holder of an inactive license may sell
17 in whole or part a stock of alcoholic beverages the holder owns
18 as of July 1, 2008 pursuant to Section 60-6B-9 NMSA 1978."

19 Section 3. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2009.

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